

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 536/2004

Notes, Office Memoranda of

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

CORAM : A.P. Lavande,J
DATE : 8th November, 2006

Heard Ms Agrawal, learned counsel for the
appellants.

2. By this second appeal, the appellants take exception to the Judgment and decree dated 19.4.2004 passed by the District Judge, Wardha in Regular Civil Appeal No. 220/2000 dismissing the appeal filed by the appellants against the Judgment and decree dated 16.3.1996 passed by the Joint Civil Judge, Senior Division, Wardha in Special Civil Suit No. 102/91.

3. The plaintiffs filed the above suit for claiming damages in the sum of Rs. 1,62,649/- against the defendants on the ground that the defendants had given contract of construction of the first floor of the agricultural office of Zilla Parishad, Wardha to the plaintiffs by agreement dated 15.2.1988. There was a dispute between the parties and on 6.11.1990 the plaintiffs issued notice (Exh. 36) to the defendants alleging that the defendants

had illegally stopped the work and the cause of action had arisen on 20.4.1988. The suit was filed on 21.9.1991. The suit was contested by the defendants. After appreciating the evidence led by the parties, the trial court dismissed the suit inter alia holding that the suit filed by the plaintiffs was barred under section 280 of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 (hereinafter referred to as "the Act". The plaintiffs preferred appeal to the District Court which was also dismissed and hence the present second appeal.

3. Ms Agrawal, the learned counsel appearing for the appellants submitted that the trial court as well as the lower appellate Court erred in holding that the suit filed by the plaintiffs was barred under section 280 of the Act. According to the learned counsel, the liability of the defendants arose out of the agreement and, therefore, Limitation Act 1963 was applicable. The learned counsel further submitted that both the courts below erred in law in holding that Section 280 of the Act was applicable and consequently erred in dismissing the suit and appeal.

4. I have considered the submissions made by the learned counsel for the appellants and perused the record. Section 280 of the Act reads as under:

"280. (1) No suit shall be commenced

against any Zilla Parishad or against any officer or servant of, or working under, a Zilla Parishad or any person acting under the orders of a Zilla Parishad or Panchayat Samiti for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Zilla Parishad officer, servant, or person one month's previous notice in writing of the intended suit nor after three months from the date of the act complained of. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name of place of abode of the person who intends to bring the action.

(2). In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender."

5. In terms of Section 280 of the Act, the suit against the Zilla Parishad or its officer or servants, for anything done or purporting to have been done in pursuance of the Act, can be filed only after giving one

month's previous notice in writing and by filing the suit within 3 months from the date of the act complained of. From perusal of Section 280 of the Act, it is clear that the case of the plaintiffs was governed by section 280 of the Act since the contract was for construction of the building for the Zilla Parishad. Admittedly, in the present case in the notice dated 6.11.1990 issued by the plaintiffs it was stated by the plaintiffs that the cause of action arose on 20.4.1988. That being the position, it is evident that neither the notice issued nor the suit filed was in compliance of section 280 of the Act. I do not find any legal infirmity in the finding given by the trial court and confirmed by the lower appellate Court holding that the suit filed by the plaintiffs was barred under section 280 of the Act.

6. In so far as the submissions of the learned counsel for the appellants that the suit is governed by the provisions of the Limitation Act is concerned, even if the same is accepted the same does not advance the case of the plaintiffs. According to the plaintiffs themselves, the alleged cause of action arose on 20.4.1988 and the suit was filed on 21.9.1991. Since the suit was admittedly filed after the period of 3 years, even if the argument on behalf of the appellants is accepted the suit is patently barred by limitation. Thus, even accepting the arguments made on behalf of the appellants, the appellants cannot succeed in

the present appeal.

7. For the reasons stated above, I do not find any merit in the appeal and hence the appeal is summarily rejected.

Judge

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